

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation

Docket Nos. RP07-376-000
RP06-569-000

ORDER ESTABLISHING HEARING AND CONSOLIDATING PROCEEDINGS

(Issued May 3, 2007)

1. On March 30, 2007, Transcontinental Gas Pipe Line Corporation (Transco), pursuant to section 4 of the Natural Gas Act (NGA), filed a request for Commission authorization to sell certain excess top gas inventory under the posting and bid evaluation procedures in section 43 of the General Terms & Conditions of its Gas Tariff (GT&C) and a request for waiver of section 43.5 of the GT&C so that revenues from the sale need not be accounted for as part of its imbalance cash-out program. This order sets these matters for hearing and consolidates the instant proceeding with the ongoing proceeding in Transco's NGA section 4 general rate case in Docket No. RP06-569-000.

Background

2. Transco states that it has excess top gas as a result of the implementation of the Commission-approved settlement agreement in Docket No. RP01-245-016.¹ According to Transco, the settlement associated with the unbundling of Emergency Eminence storage service provided that Transco would give each Rate Schedule FT customer an allocation of its proportionate share of Emergency Eminence storage service. The customer could then elect to 1) turn back to Transco, in whole or in part, its allocated share of the Emergency Eminence storage service; 2) convert, in whole or in part, its allocated share of the Emergency Eminence storage service to the new Eminence Storage Service; or 3) retain, in whole or in part, its allocated share of Emergency Eminence storage service under a new Part 284 Rate Schedule Emergency Eminence Storage Withdrawal Service (EESWS).

¹ *Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶61,232 (2006).

3. Transco states that prior to March 1, 2007, the effective date of the Settlement Agreement, 9,276,968 dts of Eminence Storage Field capacity was dedicated to Emergency Eminence storage service. It states that with the implementation of the Agreement on March 1, 2007, Emergency Eminence storage service was unbundled from Rate Schedule FT and Transco began providing service in accordance with the shipper elections reflected in the Agreement. Transco further states that as a result of those elections, including elections to turn back capacity to Transco, shippers retained 508,809 dts of Emergency Eminence capacity under Rate Schedule EESWS and Transco retained, as system flexibility, 909,169 dts of capacity turned back by shippers. Transco states that, as a result, it now requires only 1,417,978 dts of Eminence top gas inventory to support the EESWS service and retained system flexibility, leaving it an excess of 7,858,990 dts that it now seeks to sell using the procedures in section 43 of its GT&C.

4. Transco states that Section 43 applies to purchases and sales of system management gas and may be used when operating conditions threaten the operational integrity of Transco's system. Transco further states that although the operating conditions applicable to section 43 are not present, the posting and bid evaluation procedures in section 43 provide a useful framework for conducting the sale of the excess top gas, have been used successfully on numerous occasions, and would avoid having to "reinvent the wheel."

5. Transco requests that the Commission grant a waiver of section 43.5 of the GT&C which requires that any costs incurred or revenues received from the purchase or sale of system management gas be accounted for as a part of Transco's imbalance cash-out program. Transco states that the excess Eminence top gas to be sold was not purchased under section 43 using the system management gas purchase mechanism, and the proposed sale is not being undertaken to manage a threat to system integrity. Further, Transco states, the top gas at issue is classified as working capital and accounted for using the last-in-first-out methodology and based on Generally Accepted Accounting Principles, when inventory is sold, a gain or loss should be recognized. Therefore, a waiver of section 43.5 is necessary.

Notice of Filings and Responsive Pleadings

6. Notice of Transco's filing was issued on April 3, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Consolidated Edison Company of New York, Inc. (ConEd) and Philadelphia Gas Works (PGW); KeySpan Delivery Companies and PECO Energy Company; Piedmont Natural Gas Company, Inc.(Piedmont); the Public Service Commission of New York (NYPSC); PSEG Energy Resources & Trade LLC (PSEG);

and Transco Municipal Group and the Municipal Gas Authority of Georgia (the Municipalities) filed protests.

7. Washington Gas Light Company filed comments, stating that Transco's Schedule A attached to its filing may not present a just and reasonable approach to the disposition of proceeds from the sale of the Eminence Storage top gas inventory and the appropriate treatment of these proceeds should be consolidated with the issues in Transco's pending general rate case in Docket No. RP06-569-000.

8. ConEd, PGW, and the Municipalities request that the Commission permit Transco to sell the Eminence gas to permit the field to be available for Rate Schedule ESS customers. Only one of the parties appears to object to the use of the posting and bid evaluation procedures in section 43 of Transco's GT&C to sell the gas inventory. The NYPSC states that to the extent sharing of benefits is warranted, it may not be appropriate to utilize the system management gas posting and bid evaluation procedures in section 43 to sell the top gas inventory, but did not further explain its concern. In this regard, Piedmont asserts that use of this mechanism will permit shippers holding storage rights in the Eminence field to purchase such gas without paying injection fees.

9. All of the protestors conclude that Transco's request for waiver of section 43.5 of its GT&C to allow it to record any gains in Account 421.1, Gain on the Disposition of Property, suggests that Transco does not intend to share any of the benefits with customers.² The protestors contend that Transco has not shown that retention of the gains at issue is just and reasonable and that such retention may be unjust, unreasonable or unduly discriminatory. Protestors argue that under Commission precedent, customers may be entitled to some or all of the gain on the sale of the top gas.³ The protestors contend that customers incurred at least some portion of the financial risk and thus should realize some portion of the financial gain. The protestors also contend that customers bore at least some of the burden of the activity of the former Emergency Eminence top gas and therefore should reap some of the benefit. The protesting parties request that Eminence top gas be sold to Transco's customers at cost or, alternatively, the issue of

² Typically, amounts recorded in Account 421.1 are not included in the ratemaking cost-of-service. *CNG Transmission Corporation and Texas Eastern Transmission Corporation*, 83 FERC ¶ 61,081 at 61,409 (1998) (*CNG*).

³ Citing *Democratic Central Committee v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (D.C. Cir. 1973); *AT&T Info. Sys, Inc. v FCC*, 854 F.2d 1441 (D.C. Cir. 1988); *El Paso Natural Gas Co.*, 1 FERC ¶ 61,108 (1977); *Equitrans, Inc.*, 75 FERC ¶61,203 (1996); and *Trunkline Gas Co.*, 90 FERC ¶ 61,017 (2000).

whether, and to what extent, the gain on the sale of Transco storage gas inventory should be shared with customers should be set for hearing.

10. Further, PSEG objects to including the gains as part of Transco's cash out program because, it asserts, it would result in a misallocation of revenues, as cash out imbalances have no direct relationship to the customers of the Emergency Eminence service. It argues that, instead, revenues received from the sale of the top gas inventory should be refunded to the Emergency Eminence service customers.

11. With the exception of ConEd and PGW, protesters add that a hearing in the instant case should be consolidated with Transco's rate case in Docket No. RP06-569-000⁴ because there are common issues of law and fact. Both cases raise the question of whether and if so, to what extent, customers should benefit from the sale of storage gas. Docket No. RP06-569-000 is ongoing with a hearing currently scheduled for September 2007. ConEd and PGW request that the Commission defer resolution of Transco's proposal to retain the profits from its sale of the Eminence gas until it has ruled on Transco's proposal in Docket No. RP07-328-000.⁵

Discussion

12. The Commission will grant Transco's requested authorization to sell excess top gas inventory at the Eminence Storage Field and to use the posting and bid evaluation procedures in section 43 of the GT&C of its tariff to do so, without the need to show that such sales are necessary to maintain the operational integrity of its system. We agree with Transco that using these procedures would avoid unnecessarily "reinventing the

⁴ On August 31, 2006, Transco filed a general rate increase request in Docket No. RP06-569-000 under section 4 of the Natural Gas Act (NGA). Transco's rate increase request was accepted by the Commission for filing, suspended for the full statutory period, and set for hearing to explore issues including, but not limited to, cost of service, cost allocation, rate design, rate of return, and depreciation rates. *Transcontinental Gas Pipe Line Corp.*, 116 FERC ¶ 61,314 at 62,556–62,557 (2006).

⁵ On March 29, 2007, in Docket No. RP07-328-000, the Commission issued an order accepting and suspending tariff sheets and granting waiver in Transco's annual fuel retention percentage adjustment tracker filing. *Transcontinental Gas Pipe Line Corp.*, 118 FERC ¶ 61,260 (2007) (March 29 Order). In the March 29 Order the Commission directed Transco to respond to the issues raised in protests regarding its inclusion of certain Eminence storage losses in its tracker within thirty days of the issuance of the order.

wheel,” and, as noted by Piedmont, would allow shippers holding storage rights in the Eminence field to purchase such gas without paying injection fees.

13. However, the Commission will set for hearing Transco’s request for waiver of section 43.5 of its GT&C to allow it to account for the sale of such top storage gas differently than required by its tariff, because the Commission lacks a complete record to determine whether Transco’s proposal is just and reasonable. Determinations of who bore the financial burdens of the Eminence storage gas and who had the risk of capital loss, as well as which customers, if any, are entitled to any benefits of the sale of the excess Eminence gas, and how these benefits would be provided, require the further development of the record provided by an evidentiary hearing.

14. Accordingly, we set for hearing the issue of whether Transco’s request to waive the provisions of section 43.5 and retain any gain on the disposition of Eminence Storage top gas inventory is just and reasonable. Because common issues of law and fact are presented in the instant filing and Transco’s ongoing NGA section 4 rate proceeding in Docket No. RP06-569-000, the Commission will consolidate the hearing ordered herein with that in Docket No. RP06-569-000.

15. Transco proposes to account for the assumed gain in the sale of the excess top gas by recording it in Account 421.1, Gain on the Disposition of Property. However, since we are setting the rate treatment of the disposition of the gain for resolution in Docket No. RP06-569-000, we will require Transco to defer any gain in Account 253, Other Deferred Credits, pending the resolution of the rate treatment of the issue as we have required in similar circumstances.⁶

The Commission orders:

(A) Transco’s requested authorization to sell excess top gas inventory at the Eminence Storage Field and to use the posting and bid evaluation procedures in section 43 of the GT&C of its tariff to do so is hereby granted as discussed in the order.

(B) Pursuant to the NGA, particularly sections 4, 5, 8, and 15, and the Commission’s rules and regulations, a public hearing shall be held in Docket No. RP07-376-000 to examine whether Transco’s request for waiver of section 43.5 of its GT&C and its retention of proceeds from the disposition of Eminence Storage top gas inventory is just and reasonable.

⁶ See *CNG*, 83 FERC at 61,408–09.

(C) The hearing in Docket No. RP07-376-000 is consolidated with the ongoing hearing in Docket No. RP06-569-000.

(D) Transco shall adhere to the accounting requirement discussed in the body of the order.

By the Commission.

Kimberly D. Bose
Secretary